IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 317 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJRAT

Versus

PATEL ASHOKKUMAR LALJIBHAI MAKADIA & 11 OTHERS

Appearance:

Mr.K.P.Raval, learned Addl.P.P. for the appellant.

MR YOGESH S LAKHANI for Respondent No. 1-12

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 11/09/2001

ORAL JUDGEMENT

1. The appellant- State has filed the present Appeal challenging the order of acquittal recorded by the learned Judicial Magistrate, Manavadar acquitting the respondents - accused from the offences punishable under

Sections 406, 408, 409, 415, 417, 420, 477-A read with Sections 34 and 114 of I.P.C. as per the judgment and order dated 15.2.89.

2. Mr. Raval, learned Addl.PP appearing for the State has taken me through the judgment and order under challenge and the relevant evidence led by the prosecution before the trial court. According to Mr.Raval the learned Magistrate has committed an error in appreciating the evidence wherein the prosecution has in term established its case against the accused for which the accused were placed for trial. He has further submitted that the documentary evidence led before the court coupled with the oral evidence led by the prosecution witnesses clearly establishes that the accused had collected the money by way of octroi from the individual persons as per the contract given to them and the said amount is not given credit with the Panchayat and the same is misappropriated by the accused. Accordingly it is his submission that as the prosecution has established the case against the accused, the accused are required to be convicted and the order of acquittal recorded by the learned Magistrate deserves to be set aside.

3. After considering the submissions and on going through the evidence, which Mr. Raval has taken me through, Mr. Raval could not support his submission that the evidence,as has been led by the prosecution, shows that the accused have committed any offence. It is an undisputed fact that the Panchayat has given contract (Ijara) for a particular period and the said Ijara was accepted, wherein the accused No.1 - a Partnership Firm was granted the contract to recover the octroi and the Panchayat was required to receive the sum of Rs.5,50,000/--. It is also not in dispute that as per the contract the accused has deposited with the Panchayat 10% as per the conditions of the contract. It is the case of the complainant that the accused has failed to deposit the said amount and further that the accused has received this money from the individual persons by way of octroi and issued receipt and the Contractor has neither refunded the said amount to the persons, who have paid the octroi nor the accused has paid the said amount to the Panchayat by depositing the said amount recovered under the contract. The complaint was filed by the Panchayat before the learned Magistrate. The learned Magistrate has considered the said complaint and sent the same for investigation under Section 156(3) of Cr.P.C.. The said complaint was investigated by the Police and at the end of the investigation, the police has filed the

charge sheet against the accused for the aforesaid offences. I have gone through the evidence of the prosecution witnesses and on going through the judgment of the learned Magistrate, I find that the learned Magistrate has in term discussed the evidence of all witnesses, coupled with the documentary evidence and the learned Magistrate has given finding that even the prosecution has failed to prove that accused No.1 is a Partnership Firm. I may also observe that why the Panchayat is required to go before the learned Magistrate for filing the complaint as the Panchayat has given the contract to the Partnership Firm - Accused No.1 and even as per the complaint Ashokkumar was the person who was recovering the amount from the individual persons. It is the case of the complainant that the accused has misappropriated the said amount and not deposited the same with the Panchayat. Even I find from the evidence of the important witnesses that no one has come forward by complaining to the Panchayat that the accused has refused to pay the said amount or taken any excess amount from them and then the said amount is not refunded. The learned Magistrate has rightly accepted the said evidence by holding that the prosecution has failed to establish the case against the accused. I may also observe that the said person, who has received the money from the individual persons by way of octroi, is only Ashokkumar. The rest of the accused are not at all connected with the offence and there is nothing to establish that any amount has been received by the said accused. It is further found that by virtue of the agreement the contractor has deposited with the Panchayat the amount and it is further found and admitted that excess amount is deposited in respect of the recovery of the octroi. In my view, the learned Magistrate was right in acquitting the accused and the order of acquittal was based on appreciation of the evidence. This court is not required to interfere by reversing the said order, which was passed on appreciation of the evidence. There is no substance in this Criminal Appeal and the same is accordingly dismissed.

(D.K.Trivedi,J)